

MONTANA LEGISLATIVE HISTORY

Chapter 05 19 97

Bill H \_\_\_\_\_ S 81

Original bill & history ✓C

H. Committee on Transportation

Hearing Date(s) 2/3 \_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

Date Out 2/04 \_\_\_\_\_ C

S. Committee on Highways & Trans.

Hearing Date(s) 1/14 \_\_\_\_\_ C

Ex Action 1/16 \_\_\_\_\_ C

\_\_\_\_\_ C

\_\_\_\_\_ C

~~out~~ 1/21

Did this bill originate in an interim committee? \_\_\_\_\_ Yes \_\_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

|      |                                  |    |   |
|------|----------------------------------|----|---|
| 4/09 | 3RD READING CONCURRED AS AMENDED | 49 | 1 |
| 4/14 | SIGNED BY PRESIDENT              |    |   |
| 4/15 | SIGNED BY SPEAKER                |    |   |
| 4/15 | TRANSMITTED TO GOVERNOR          |    |   |
| 4/22 | SIGNED BY GOVERNOR               |    |   |
|      | CHAPTER NUMBER 348               |    |   |
|      | EFFECTIVE DATE: 10/01/97         |    |   |

SB 80

INTRODUCED BY HERTEL

LC0333 DRAFTER: MALY

PROHIBIT UNDERWRITING ON OR AFTER THE ISSUE DATE OF THE POLICY,  
CERTIFICATE, OR SUBSCRIBER CONTRACT EXCEPT UNDER CERTAIN  
CONDITIONS

BY REQUEST OF STATE AUDITOR

|       |                                 |     |   |
|-------|---------------------------------|-----|---|
| 12/31 | INTRODUCED                      |     |   |
| 1/03  | REFERRED TO BUSINESS & INDUSTRY |     |   |
| 1/06  | FIRST READING                   |     |   |
| 1/21  | HEARING                         |     |   |
| 1/23  | COMMITTEE REPORT—BILL PASSED    |     |   |
| 1/24  | 2ND READING PASSED              | 48  | 0 |
| 1/25  | 3RD READING PASSED              | 46  | 0 |
|       | TRANSMITTED TO HOUSE            |     |   |
| 1/27  | FIRST READING                   |     |   |
| 1/27  | REFERRED TO BUSINESS & LABOR    |     |   |
| 2/05  | HEARING                         |     |   |
| 2/06  | COMMITTEE REPORT—BILL CONCURRED |     |   |
| 3/04  | 2ND READING CONCURRED           | 100 | 0 |
| 3/05  | 3RD READING CONCURRED           | 100 | 0 |
|       | RETURNED TO SENATE              |     |   |
| 3/10  | SIGNED BY PRESIDENT             |     |   |
| 3/10  | SIGNED BY SPEAKER               |     |   |
| 3/11  | TRANSMITTED TO GOVERNOR         |     |   |
| 3/13  | SIGNED BY GOVERNOR              |     |   |
|       | CHAPTER NUMBER 53               |     |   |
|       | EFFECTIVE DATE: 10/01/97        |     |   |

SB 81

INTRODUCED BY SWYSGOOD

LC0265 DRAFTER: ERICKSON

REVISE THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF  
COMMERCIAL MOTOR VEHICLES

BY REQUEST OF DEPARTMENT OF JUSTICE

|       |                                            |    |    |
|-------|--------------------------------------------|----|----|
| 12/31 | INTRODUCED                                 |    |    |
| 1/03  | REFERRED TO HIGHWAYS & TRANSPORTATION      |    |    |
| 1/06  | FIRST READING                              |    |    |
| 1/14  | HEARING                                    |    |    |
| 1/21  | COMMITTEE REPORT—BILL PASSED AS AMENDED    |    |    |
| 1/23  | 2ND READING PASSED                         | 49 | 0  |
| 1/24  | 3RD READING PASSED                         | 48 | 0  |
|       | TRANSMITTED TO HOUSE                       |    |    |
| 1/25  | FIRST READING                              |    |    |
| 1/25  | REFERRED TO TRANSPORTATION                 |    |    |
| 2/03  | HEARING                                    |    |    |
| 2/04  | COMMITTEE REPORT—BILL CONCURRED AS AMENDED |    |    |
| 3/04  | 2ND READING CONCURRED                      | 79 | 19 |
| 3/05  | 3RD READING CONCURRED                      | 92 | 8  |
|       | RETURNED TO SENATE WITH AMENDMENTS         |    |    |
| 3/10  | 2ND READING AMENDMENTS CONCURRED           | 50 | 0  |
| 3/11  | 3RD READING PASSED                         | 50 | 0  |

3/13 SIGNED BY PRESIDENT  
 3/13 SIGNED BY SPEAKER  
 3/14 TRANSMITTED TO GOVERNOR  
 3/19 SIGNED BY GOVERNOR  
 CHAPTER NUMBER 105  
 EFFECTIVE DATE: 10/01/97

SB 82 INTRODUCED BY MAHLUM *LC0174 DRAFTER: KURTZ*

ESTABLISH A SCENIC-HISTORIC BYWAYS PROGRAM  
 BY REQUEST OF DEPARTMENT OF TRANSPORTATION

|       |                                         |    |    |
|-------|-----------------------------------------|----|----|
| 12/31 | INTRODUCED                              |    |    |
| 1/02  | FISCAL NOTE REQUESTED                   |    |    |
| 1/03  | REFERRED TO HIGHWAYS & TRANSPORTATION   |    |    |
| 1/06  | FIRST READING                           |    |    |
| 1/10  | FISCAL NOTE RECEIVED                    |    |    |
| 1/11  | FISCAL NOTE PRINTED                     |    |    |
| 1/21  | HEARING                                 |    |    |
| 1/30  | COMMITTEE REPORT—BILL PASSED AS AMENDED |    |    |
| 2/04  | 2ND READING PASSED                      | 39 | 11 |
| 2/05  | 3RD READING PASSED                      | 39 | 11 |
|       | TRANSMITTED TO HOUSE                    |    |    |
| 2/06  | FIRST READING                           |    |    |
| 2/06  | REFERRED TO TRANSPORTATION              |    |    |
| 3/07  | HEARING                                 |    |    |
| 3/10  | TABLED IN COMMITTEE                     |    |    |
|       | DIED IN COMMITTEE                       |    |    |

SB 83 INTRODUCED BY SPRAGUE, ET AL. *LC0040 DRAFTER: MALY*

AUTHORIZE THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES  
 BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON STATE-CHARTERED  
 FOREIGN INVESTMENT DEPOSITORY

|       |                                            |    |    |
|-------|--------------------------------------------|----|----|
| 12/31 | INTRODUCED                                 |    |    |
| 1/03  | REFERRED TO BUSINESS & INDUSTRY            |    |    |
| 1/06  | FISCAL NOTE REQUESTED                      |    |    |
| 1/06  | FIRST READING                              |    |    |
| 1/12  | FISCAL NOTE RECEIVED                       |    |    |
| 1/14  | FISCAL NOTE PRINTED                        |    |    |
| 1/22  | HEARING                                    |    |    |
| 1/23  | COMMITTEE REPORT—BILL PASSED AS AMENDED    |    |    |
| 1/27  | 2ND READING PASSED AS AMENDED              | 38 | 12 |
| 1/28  | 3RD READING PASSED                         | 36 | 13 |
|       | TRANSMITTED TO HOUSE                       |    |    |
| 1/29  | FIRST READING                              |    |    |
| 1/29  | REFERRED TO BUSINESS & LABOR               |    |    |
| 3/05  | HEARING                                    |    |    |
| 3/06  | COMMITTEE REPORT—BILL CONCURRED AS AMENDED |    |    |
| 4/03  | 2ND READING CONCURRED                      | 92 | 5  |
| 4/04  | 3RD READING CONCURRED                      | 93 | 6  |
| 4/04  | REVISED FISCAL NOTE REQUESTED              |    |    |
|       | RETURNED TO SENATE WITH AMENDMENTS         |    |    |
| 4/08  | REVISED FISCAL NOTE RECEIVED               |    |    |
| 4/08  | 2ND READING AMENDMENTS CONCURRED           | 50 | 0  |
| 4/08  | REVISED FISCAL NOTE PRINTED                |    |    |
| 4/11  | 3RD READING CONCURRED AS AMENDED           | 43 | 7  |
| 4/18  | SIGNED BY PRESIDENT                        |    |    |
| 4/20  | SIGNED BY SPEAKER                          |    |    |
| 4/21  | TRANSMITTED TO GOVERNOR                    |    |    |

## SENATE BILL NO. 81

INTRODUCED BY SWYSGOOD

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING AND ROADWAY DESIGN PURPOSES; CLARIFYING LICENSE SUSPENSION FOR SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806, 61-8-808, AND 61-8-812, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-1-102, MCA, is amended to read:

**"61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and designed primarily or used to transport persons or property upon the highways of the state, ~~except that for~~. For the purpose of chapter 3, the term also includes trailers, semitrailers, and house trailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123."

**Section 2.** Section 61-1-134, MCA, is amended to read:

**"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) has a gross combination weight rating or, in the absence of a gross combination weight rating, a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(b) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

~~(b)(c)~~ is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

~~(e)(d)~~ is a school bus as defined in 20-10-101; or

~~(e)(e)~~ is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

(2) The following vehicles are not commercial motor vehicles:

(a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

(b) a police emergency response vehicle; or

(c) a vehicle:

(i) controlled and operated by a farmer or person employed by a farmer;

(ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150 miles of the farm headquarters; and

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section, "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person."

**Section 3.** Section 61-5-104, MCA, is amended to read:

**"61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession

1 of a valid license issued to that person in a foreign country by the armed forces of the United States, for  
2 a period of 45 days from the date of the person's return to the United States;

3 (d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road  
4 machine, farm tractor, or implement of husbandry ~~temporarily operated or moved~~ for use in intrastate  
5 commerce on a highway;

6 (e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility  
7 person, or other member of the crew of a railroad locomotive or train being operated upon rails, including  
8 operation on a railroad crossing a public street, road, or highway. A person employed as described in this  
9 subsection is not required to display a driver's license to a law enforcement officer in connection with the  
10 operation of a railroad locomotive or train within Montana.

11 (2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid  
12 operator's license issued to the nonresident by the nonresident's home state or country may operate a  
13 motor vehicle, except a commercial motor vehicle, in this state.

14 (3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~391~~ 383,  
15 and in immediate possession of a valid commercial driver's license issued to the nonresident by the  
16 nonresident's home state or country may operate a commercial motor vehicle in this state.

17 (4) A nonresident who is at least 18 years of age, whose home state or country does not require  
18 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than  
19 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the  
20 nonresident.

21 (5) A driver's license issued under this chapter to ~~any~~ a person who enters the United States armed  
22 forces, if valid and in effect at the time that the person enters the service, continues in effect so long as  
23 the service continues, unless the license is ~~seener~~ suspended, revoked, or canceled for a cause as provided  
24 by law, and for ~~not up to~~ exceed 30 days following the date on which the licensee is honorably separated  
25 from the service. During the 30-day period, the license is valid only when the license and the licensee's  
26 discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

27  
28 **Section 4.** Section 61-7-114, MCA, is amended to read:

29 **"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental  
30 reports ~~shall~~ must be without prejudice to the individual reporting and ~~shall~~ must be for the confidential use

1 of the department or other ~~state~~ governmental agencies ~~having use for the records~~ for accident prevention,  
2 roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state  
3 relating to the deposit of security and proof of financial responsibility by persons driving or the owners of  
4 motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~  
5 the identity is not otherwise known or when ~~such the~~ person denies ~~his presence~~ being present at the  
6 accident.

7 (2) Except as provided in this section, all accident reports and supplemental information filed as  
8 required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying.~~  
9 Copying of lists of ~~such~~ reports ~~be~~ is not permitted. The report and supplemental information filed by law  
10 enforcement personnel, as required by this part, may be examined and copied, without obtaining a court  
11 order, by:

12 (a) any a person named in the report ~~or reports or by any;~~

13 (b) a driver, passenger, or pedestrian involved in the accident; ~~or by his~~

14 (c) the representative of the person, driver, passenger, or pedestrian designated in writing, ~~by;~~

15 (d) a party to a civil action arising from the accident; ~~or~~

16 (e) ~~if the person is deceased, by his~~ the executor or administrator or by the attorney representing  
17 ~~his the~~ executor or administrator if the person is deceased."

18  
19 **Section 5.** Section 61-8-803, MCA, is amended to read:

20 **"61-8-803. Suspension of commercial driver's license -- serious traffic violations. (1)** If a  
21 ~~commercial motor vehicle operator's record shows that the operator~~ the department receives notice from  
22 a court or another licensing jurisdiction that a person holding a commercial driver's license has been  
23 convicted of a more than one serious traffic violation as defined in federal regulations in separate incidents  
24 within a 3-year period, the department shall suspend the person's commercial driver's license:

25 ~~(1)(a)~~ (a) for 60 days ~~if the operator was convicted of two hazardous moving violations within 3 years~~  
26 upon receipt of notice of the second conviction; or

27 ~~(2)(b)~~ (b) for 120 days ~~if the operator was convicted of three hazardous moving violations within 3~~  
28 years upon receipt of notice of the third or subsequent conviction.

29 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a  
30 commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely; or

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."

**Section 6.** Section 61-8-805, MCA, is amended to read:

**"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the department shall suspend the person's commercial driver's license~~ The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a certified report from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) ~~for 1 year, with no provision for a restricted probationary license or endorsement~~, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the ~~offense~~ violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) ~~for life, with no provision for a restricted probationary license or endorsement~~, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, ~~unless a restricted license or endorsement is allowed by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ a measured



1 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle  
2 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24  
3 hours.

4 (3) The fact that ~~any~~ a person charged with a violation of the provisions of subsection (1) is  
5 entitled to use alcohol under the laws of Montana is not a defense against ~~any~~ a charge of violating the  
6 provisions of subsection (1).

7 ~~(4) The department shall immediately notify in writing any person whose commercial driver's~~  
8 ~~license is suspended under this section. The person may file a petition within 30 days after the notice is~~  
9 ~~given for a hearing in the matter in the district court in the county in which the finding of alcohol~~  
10 ~~concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'~~  
11 ~~written notice to the county attorney of the county in which the appeal is filed. The county attorney shall~~  
12 ~~represent the state. The court shall take testimony and examine the facts of the case, except that the issue~~  
13 ~~is limited to whether the person was driving or had actual physical control of a commercial motor vehicle~~  
14 ~~while the person's alcohol concentration was 0.04 or more. The court shall determine whether the~~  
15 ~~petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.~~  
16 ~~The provisions of 61-8-404 apply to any proceedings under this section."~~

17  
18 **Section 7:** Section 61-8-806, MCA, is amended to read:

19 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**  
20 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to  
21 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-806,~~ to a  
22 test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any~~ a measured or  
23 ~~detected amount or detected presence~~ of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is  
24 requested to submit to the test by a peace officer ~~having~~ who has reasonable grounds to believe that the  
25 ~~person to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways  
26 of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration  
27 or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be  
28 administered and may request that the person submit to a preliminary alcohol screening test before a blood,  
29 breath, or urine test is taken.

30 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have

1 withdrawn the consent provided in subsection (1).

2 (3) ~~If a commercial motor vehicle operator who is a resident of Montana~~ person ~~refuses upon the~~  
3 ~~request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the~~  
4 ~~test may not be given. On behalf of the department, but~~ the officer shall immediately seize the person's  
5 commercial driver's license and forward the license to the department, along with a ~~sworn~~ certified  
6 under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was  
7 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the  
8 public while having ~~any a~~ a measurable or detectable alcohol concentration or detected presence of alcohol  
9 and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the  
10 report, the department shall suspend the license for a period provided in subsection (5).

11 (4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue,  
12 on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit~~  
13 ~~is valid for 72 hours after issuance, effective 12 hours after the time of issuance, and shall provide the~~  
14 person with written notice of the license suspension and the right to a hearing under 61-8-808.

15 (5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),~~  
16 ~~the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's  
17 certified report, the department shall suspend the person's commercial driver's license, with no provision  
18 for a restricted probationary commercial driver's license, for:

19 (a) ~~upon first refusal, for 1 year, with no provision for a restricted probationary license or~~  
20 ~~endorsement upon a first refusal~~, except that if the ~~offense~~ violation occurred in a commercial motor vehicle  
21 transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

22 (b) life, upon a second or subsequent refusal at any time as determined from the records of the  
23 department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed~~  
24 ~~by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and  
25 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

26 (6) ~~A nonresident commercial motor vehicle operator who refuses to submit to a test as provided~~  
27 ~~in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be~~  
28 ~~given a temporary driving permit as provided in subsection (4)."~~

29  
30 Section 8. Section 61-8-808, MCA, is amended to read:

1 "61-8-808. Right of appeal to court. (1) ~~The department shall immediately notify in writing any~~  
2 ~~person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the~~  
3 ~~person may, within~~ Within 30 days after receipt of notification notice of the suspension and the right to  
4 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition  
5 for a hearing on the matter in the district court in the county where the person resides or to challenge the  
6 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or  
7 refusal was made.

8 (2) The court has jurisdiction and shall set the matter for hearing ~~upon~~. The court shall give at least  
9 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney  
10 shall represent the state.

11 (3) The court shall take testimony and examine the facts of the case, except that:

12 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was  
13 driving or had actual physical control of a commercial motor vehicle while the person's alcohol  
14 concentration was 0.04 or more; and

15 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer  
16 had reasonable grounds to believe that the person had been driving or was in actual physical control of a  
17 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable  
18 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the  
19 person refused to submit to the test.

20 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or  
21 is subject to suspension as provided in this part."

22  
23 Section 9. Section 61-8-812, MCA, is amended to read:

24 "61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle. (1)  
25 Upon receipt of ~~information that a commercial motor vehicle operator~~ notice from a court of competent  
26 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been  
27 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out-of  
28 service out-of-service order, the department shall suspend the operator's person's commercial driver's  
29 license for:

30 (a) 6 months for a first conviction and for;

1 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the  
2 time of the violation was not transporting placardable hazardous materials or was not designed or being  
3 used to transport more than 15 passengers, inclusive of the driver; and

4 (c) 3 years:

5 (i) for a second conviction if the vehicle:

6 (A) being operated at the time of the violation was transporting placardable hazardous materials;

7 or

8 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

9 (ii) for a third or subsequent conviction.

10 (2) For purposes of this section, an offender is considered to have been previously convicted if less  
11 than 10 years have elapsed between the commission of the present offense and a previous conviction.

12 (3) A temporary or probationary commercial driver's license may not be issued while a commercial  
13 driver's license is suspended under subsection (1)."

14 -END-

**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON HIGHWAYS & TRANSPORTATION**

**Call to Order:** By **CHAIRMAN ARNIE MOHL**, on January 14, 1997, at 1:00 pm, in Room 410.

**ROLL CALL**

**Members Present:**

Sen. Arnie A. Mohl, Chairman (R)  
Sen. Mack Cole, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Bob DePratu (R)  
Sen. John R. Hertel (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Linda J. Nelson (D)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Connie Erickson, Legislative Services Division  
Phoebe Kenny, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 29 and SB 81; Posted 1-8-97  
Executive Action: SB 11 and SB 12

**HEARING ON SB 29**

*{Tape: 1; Side: A*

**Sponsor:** SENATOR CHUCK SWYSGOOD, SD 17, Dillon.

**Proponents:**

David Galt, Motor Carrier Services, Ben Havdahl, Motor Carriers Association.

**Opening Statement by Sponsor:** SENATOR CHUCK SWYSGOOD, SD 17, Dillon, Senate Bill 29 eliminates three permits that the Department of Transportation now issues. The department believes,

harvest season of the agricultural product transported. That is telling us when we issue a permit, we have to give you the permit for the whole time. Section (3) requires the permit be purchased any time the vehicle exceeds 80,000 pounds. So in current law, if you are out during the farm tolerance period and you have a two axle or a three axle farm truck running over gross, but your gross weight is 30,000 or 40,000 pounds, you are not over 80,000 and you are still getting that tolerance. By leaving the remainder of the language in the other section, it leaves your farm tolerance totally intact, you just don't have to have a permit for it.

**SENATOR ARNIE MOHL**, is there a restricted route now?

**David Galt**, no, in this sense there is not a restricted route for vehicles over 80,000 pounds. There have always been county roads that have ten ton bridges posted. Nothing can go over those roads. We don't consider that a restricted route in the same sense that we considered restricted routes that only trucks under 80,000 pounds could operate on.

**SENATOR MOHL**, legally, we in the trucking industry have been forced to buy a restricted route permit when there have been no restricted routes. This does not change going over those ten ton bridges. You still are restricted to the ten ton or whatever the limit on the bridges are no matter what your permit says.

**David Galt**, that is absolutely correct.

**Closing by Sponsor:**

**SENATOR SWYSGOOD**, basically what the department is trying to do is simplify the paper work that is associated with this. It isn't allowing them to do any more then they currently do. The big difference in the loss of revenue is how it is proportioned under the GVW fees.

**HEARING ON SB 81**

*{Tape: 1; Side: A; Approx. Time Count: 35 minutes}*

**Sponsor:** **SENATOR CHUCK SWYSGOOD**, SD 17, Dillon

**Proponents:** **Brenda Nordland**, Department of Justice

**Opening Statement by Sponsor:**

**SENATOR SWYSGOOD**, during an audit by the federal government, mistakes were found that this bill addresses. There is nothing contained in the bill that changes the way we operate our commercial drivers' license program. Basically, it clarifies some of the gross weight stations and ratings and how that is applied clarifies the passengers capacity and the hazardous materials.

**Proponents' Testimony:**

Brenda Nordland, Department Of Justice, five of these sections are driven by audit dings, brought forth in our meeting with the federal authorities concerning our administration of the Commercial Drivers License section. Another one is driven by an audit question that pertains to the Motor Carriers Safety Enforcement Program. The audit driven sections are sections 1,2,3,4, and 9.

The remainder of the changes are additions that the Division has sought in order to bring motor vehicle laws in compliance with the implied consent law, which applies to base drivers license holders. On page five is the first change that pertains to the CDL holder, with respect to alcohol concentration or refusal of blood, breath or urine testing.

In section 6 which amends 61-8-805, we are changing the method by which an driver is notified of a suspension following an 04 finding by a peace officer. In the past the peace officer has sent an affidavit or sworn report to the Department. We send out a letter to the CDL holder notifying them, that based on our receipt of that sworn affidavit, their drivers license is suspended according to the provisions under federal regulation, incorporated herein. When the officer is on the road with the individual we will be providing them with a form that informs the driver that they are suspended as of that point, subject to a temporary driving privilege of five days rather than 72 hours, as the law previously stated. It will also provide information as to their right to a hearing to challenge the suspension based on either the 04 alcohol concentration level in 61-8-805 or refusal under 61-8-806.

The other change that you will note is an administrative change. We are no longer requiring the report that the officer sends to the department be a sworn report. Instead we are seeking approval of the legislature to permit certified reports. This eliminates having to have a notary present to sign and notarize the officers signature every time an encounter based on an .04 or a testing refusal occurs. We are asking this committee to recognize that if the officer certifies under penalty of law that the facts contained in this affidavit are true and correct, that should suffice for us to take departmental suspension action. Of course the driver still has the right to go into court to challenge the suspension based on the provisions of the law.

Section eight, which starts on page seven and continues on page eight is the right of appeal to court. We're not changing the law in any sense here. We are consolidating redundant language as to the right to hearing, that appeared in 61-8-806 and simply referring to both the .04 suspension under 61-8-806, and the suspension based on testing refusal under 61-8-805 as both being provided under this same section. That is not intended to be a change in the law just merely to streamline the language.

I want to point out briefly the change that we have recommended in terms of accident reporting. This is contained on page three and four. Current law restricts the use of accident reports in terms of their accessibility to the Department of Justice or other state agencies having use of the records for accident prevention purposes or other administration of the laws of the state, relating to proof of financial responsibility. We are restricted under this law from sharing the accident reports concerning trucks and passenger cars, with the federal authorities for the Federal Highway Administration and Federal Highway Safety Commission, because we specifically say state agencies. By incorporating this amendment we are allowing disclosure of these accident reports for limited purposes who have use for them either in accident prevention, road way design, or motor carrier safety monitoring purposes.

**Ben Havdahl, Montana Motor Carriers Association**, the changes that are being proposed by the department are required by federal law and put our law in compliance with federal law. The changes being proposed in this bill are beneficial and our industry people support this bill.

**Questions From Committee Members and Responses:**

*{Tape: 1; Side: B*

**SENATOR BOB DEPRATU**, what is considered a serious traffic violation?

**Brenda Nordland**, at the top of page five is a numeration of what a serious traffic violation means for purposes of the commercial motor vehicle.

**Closing by Sponsor:**

**SENATOR SWYSGOOD**, I appreciate the hearing on both bills. This particular bill is something we live with when we have federal regulations involved in things. Ninety percent of this bill contains those adjustments that are required by federal law.

**EXECUTIVE ACTION ON SB 11**

**Motion:** SENATOR HERTEL MOVED SB 11 PASS.

**Amendments:** sb001101.ace, see (EXHIBIT 5).

**Discussion:** SENATOR MACK COLE, I believe everyone has before you an amendment on SB 11, EXHIBIT 2. There are three parts to it. The biggest thing the amendment does is to give easements on the property that is subject to exchange. I would recommend a do pass.



**MINUTES**

**MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON HIGHWAYS & TRANSPORTATION**

**Call to Order:** By **CHAIRMAN ARNIE MOHL**, on January 16, 1997, at  
1:00 PM, in 410

**ROLL CALL**

**Members Present:**

Sen. Arnie A. Mohl, Chairman (R)  
Sen. Mack Cole, Vice Chairman (R)  
Sen. Larry Baer (R)  
Sen. Bob DePratu (R)  
Sen. John R. Hertel (R)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Greg Jergeson (D)  
Sen. Linda J. Nelson (D)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Connie Erickson, Legislative Services Division  
Phoebe Kenny, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 85 & SB 129; Posted 1-8-97  
Executive Action: SB 29 (Revisited 1-21-97)

**HEARING ON SB 129**

*{Tape: 1; Side: A*

**Sponsor:** SENATOR WILLIAM CRISMORE, SD 41, Libby

**Proponents:**

Keith Olson, MT Logging Association  
David Galt, MT Department of Transportation

**Opponents:** None

Discussion: SENATOR JERGESON, I did not offer an amendment, but in light of our conversation on the floor the other day this does reduce revenues to the Department of Transportation, and this bill does not have a contingency voidance clause on it. Maybe the excuse is that this is such a huge budget and such a small amount that it really doesn't matter.

Motion: SENATOR BAER, said that he would like to move to amend the bill to include a contingency voidance clause if it applies.

Vote: The motion to amend SB 29 PASSED by Roll Call Vote.

Motion: SENATOR BAER, moved SB 29 DO PASS AS AMENDED.

Vote: SB 29 PASSED AS AMENDED, UNANIMOUSLY.

EXECUTIVE ACTION ON SB 81

Motion: SENATOR COLE moved SB 81 DO PASS.

Motion: SENATOR COLE move to amend SB 81.

Discussion: SENATOR HOLDEN, when you are trying to handle these claims and get payments to the insured quickly, a lot of times you just need that police report. This amendment allows insurance people to get that report.

Vote: The motion to amend SB 81 PASSED with SENATOR STANG voting NO.

Vote: SB 81 PASSED AS AMENDED, UNANIMOUSLY.

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
55th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TRANSPORTATION**

**Call to Order:** By Chairman Shiell Anderson, on February 3, 1997,  
at 3:00 p.m., in Room 420.

**ROLL CALL**

**Members Present:**

Rep. Shiell W. Anderson, Chairman (R)  
Rep. Rick Jore, Vice Chairman (Majority) (R)  
Rep. Joe Barnett (R)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Matt Brainard (R)  
Rep. Bob Clark (R)  
Rep. Charles R. Devaney (R)  
Rep. David Ewer (D)  
Rep. H.S. "Sonny" Hanson (R)  
Rep. Marian W. Hanson (R)  
Rep. Rod Marshall (R)  
Rep. Dorothy C. Simpson (D)  
Rep. Jack Wells (R)  
Rep. Bill Whitehead (D)

**Members Excused:** Rep. Pat Galvin  
Rep. Gerald Pease  
Rep. Bill Ryan

**Staff Present:** Leanne Kurtz, Legislative Services Division  
Mary Lou Schmitz, Committee Secretary

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 81 - 1-31-97

Executive Action: HB 124 - **TABLED**  
HB 213 - **TABLED**  
HB 290 - **DO PASS**  
SB 81 - **BE CONCURRED IN AS  
AMENDED**

**EXECUTIVE ACTION ON HB 124**

**{Tape: 1; Side: A; Approx. Time Count: 2.7;}**

**Motion:** Rep. Rod Marshall moved to TABLE HB 124.

Discussion: Reps. Sonny Hanson, Bookout.

Vote: Motion carried 12-1.

EXECUTIVE ACTION ON HB 213

{Tape: 1; Side: A; Approx. Time Count: 3.2; }

Motion/Vote: Rep. Rick Jore moved to TABLE HB 213. Motion carried unanimously. 13 - 0

EXECUTIVE ACTION ON HB 290

{Tape: 1; Side: A; Approx. Time Count: 5.8; }

Motion: Rep. Joe Barnett moved HB 290 DO PASS.

{Tape: 1; Side: A; Approx. Time Count: 6.6 - 11.0; }

Discussion: Reps. Bitney, Clark, Anderson, Marshall; Response from Colonel Craig Reap, Montana Highway Patrol.

Vote: Motion carried unanimously, 13 - 0.

HEARING ON SB 81

"AN ACT GENERALLY REVISING LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES"

Sponsor: Senator Charles Swysgood, SD 17.

{Tape: 1; Side: A; Approx. Time Count: 11.9; }

Opening Statement by Sponsor: Senator Swysgood said the Bill revises the law changing licensing and operation of commercial motor vehicles.

{Tape: 1; Side: A; Approx. Time Count: 15.5 - 19.4; }

Proponent: Brenda Nordlund, Montana Department of Justice, see EXHIBIT 1.

{Tape: 1; Side: A; Approx. Time Count: 20.6; Comments: .}

Ben Havdahl, Montana Motor Carriers' Association.

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 21.8; }

Questions From Committee Members and Responses: Rep. Sonny Hanson.

{Tape: 1; Side: A; Approx. Time Count: 22.3; }

Closing by Sponsor: Senator Swysgood closed the Hearing on SB 81.

EXECUTIVE ACTION ON SB 81

{Tape: 1; Side: A; Approx. Time Count 24.0: ; Comments: .}

Motion: Rep. Ewer moved SB 81 Be Concurred In.

Motion/Vote: Rep. Sonny Hanson moved the amendments. 16 - 0

{Tape: 1; Side: A; Approx. Time Count: 35.0; }

Motion/Vote: Rep. Ewer moved SB 81 Be Concurred In as amended.

Motion carried unanimously. 16 - 0.

## SENATE BILL NO. 81

INTRODUCED BY SWYSGOOD

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806, 61-8-808, AND 61-8-812, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-1-102, MCA, is amended to read:

**"61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and designed primarily or used to transport persons or property upon the highways of the state, ~~except that for~~. For the purpose of chapter 3, the term also includes trailers, semitrailers, and house trailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123."

**Section 2.** Section 61-1-134, MCA, is amended to read:

**"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce

REFERENCE BILL  
AS AMENDED SB 81

1 to transport passengers or property if the vehicle:

2 (a) has a gross combination weight rating or, in the absence of a gross combination weight rating,  
3 a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating  
4 of more than 10,000 pounds;

5 (b) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

6 ~~(b)~~(c) is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

7 ~~(c)~~(d) is a school bus as defined in 20-10-101; or

8 ~~(d)~~(e) is of any size and is used to transport any quantity or form of hazardous material required  
9 to be placarded pursuant to Title 49, Code of Federal Regulations.

10 (2) The following vehicles are not commercial motor vehicles:

11 (a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

12 (b) a police emergency response vehicle; or

13 (c) a vehicle:

14 (i) controlled and operated by a farmer or person employed by a farmer;

15 (ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150  
16 miles of the farm headquarters; and

17 (iii) not used to transport goods for compensation or hire.

18 (3) For purposes of this section, "farmer" means a person who operates a farm or who is directly  
19 involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control  
20 of that person."

21

22 **Section 3. Section 61-5-104, MCA, is amended to read:**

23 **"61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:**

24 (a) a person who is a member of the armed forces of the United States while operating a motor  
25 vehicle owned by or leased to the United States government and being operated on official business;

26 (b) a person who is a member of the armed forces of the United States on active duty in Montana  
27 who holds a valid license issued by another state and the spouse of the person who holds a valid license  
28 issued by another state and who is not employed in Montana, except as a member of the armed forces:  
29 If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be  
30 licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry temporarily operated or moved for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~394~~ 383, and in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home state or country may operate a commercial motor vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to ~~any~~ a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is ~~seener~~ suspended, revoked, or canceled for a cause as provided by law, and for ~~not up to~~ exceed 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

**Section 4.** Section 61-7-114, MCA, is amended to read:

**"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental



reports ~~shall~~ must be without prejudice to the individual reporting and ~~shall~~ must be for the confidential use of the department or other state governmental agencies ~~having use for the records~~ for accident prevention, roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~ the identity is not otherwise known or when ~~such~~ the person denies ~~his presence~~ being present at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying.~~ Copying of lists of ~~such~~ reports ~~be~~ is not permitted. The report and supplemental information filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

(a) ~~any~~ a person named in the report ~~or reports or by any~~ OR INVOLVED IN THE ACCIDENT;

(b) ~~a driver, passenger, or pedestrian involved in the accident; or by his~~

~~(c) the representative of the person OR THE PERSON'S INSURANCE CARRIER, driver, passenger, or pedestrian~~ REFERRED TO IN SUBSECTION (2)(A), designated in writing, by, OR THE INSURANCE CARRIER OF THAT PERSON;

~~(d)(C)~~ a party to a civil action arising from the accident; or

~~(e)(D) if the person is deceased, by his~~ the executor, ~~or~~ THE administrator, ~~or by the attorney representing his~~ the executor or administrator if the person is deceased."

Section 5. Section 61-8-803, MCA, is amended to read:

**"61-8-803. Suspension of commercial driver's license -- serious traffic violations.** (1) ~~If a commercial motor vehicle operator's record shows that the operator~~ the department receives notice from a court or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of a more than one serious traffic violation as defined in federal regulations in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(1)(a) ~~for 60 days if the operator was convicted of two hazardous moving violations within 3 years upon receipt of notice of the second conviction; or~~

(2)(b) ~~for 120 days if the operator was convicted of three hazardous moving violations within 3~~

1 years upon receipt of notice of the third or subsequent conviction.

2 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a  
3 commercial motor vehicle, of:

4 (a) speeding in excess of 15 miles an hour above a posted speed limit;

5 (b) reckless driving;

6 (c) improper or erratic traffic lane changes;

7 (d) following too closely; or

8 (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle,  
9 excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."

10  
11 **Section 6.** Section 61-8-805, MCA, is amended to read:

12 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**  
13 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in  
14 actual physical control of a commercial motor vehicle is subject to the suspension of the person's  
15 commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person~~  
16 ~~was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the~~  
17 ~~department shall suspend the person's commercial driver's license~~ The peace officer who determines that  
18 the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall  
19 immediately seize the person's commercial driver's license and, on behalf of the department, give the  
20 person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt  
21 of a certified report from the peace officer that the person was operating a commercial motor vehicle with  
22 an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for  
23 a restricted probationary commercial license, for:

24 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt  
25 of the first report of a 0.04 or more alcohol concentration violation, except that if the offense violation  
26 occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must  
27 be for 3 years; and

28 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of  
29 a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from  
30 the records of the department, unless a restricted license or endorsement is allowed by federal rules

1 ~~governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license  
2 reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

3 (2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ a measured  
4 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle  
5 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24  
6 hours.

7 (3) The fact that ~~any~~ a person charged with a violation of the provisions of subsection (1) is  
8 entitled to use alcohol under the laws of Montana is not a defense against ~~any~~ a charge of violating the  
9 provisions of subsection (1).

10 ~~(4) The department shall immediately notify in writing any person whose commercial driver's~~  
11 ~~license is suspended under this section. The person may file a petition within 30 days after the notice is~~  
12 ~~given for a hearing in the matter in the district court in the county in which the finding of alcohol~~  
13 ~~concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'~~  
14 ~~written notice to the county attorney of the county in which the appeal is filed. The county attorney shall~~  
15 ~~represent the state. The court shall take testimony and examine the facts of the case, except that the issue~~  
16 ~~is limited to whether the person was driving or had actual physical control of a commercial motor vehicle~~  
17 ~~while the person's alcohol concentration was 0.04 or more. The court shall determine whether the~~  
18 ~~petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.~~  
19 ~~The provisions of 61-8-404 apply to any proceedings under this section."~~

21 **Section 7. Section 61-8-806, MCA, is amended to read:**

22 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**  
23 **suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to**  
24 **the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a**  
25 **test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any~~ a measured ~~or~~**  
26 **~~detected~~ amount or detected presence of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is**  
27 **requested to submit to the test by a peace officer ~~having~~ who has reasonable grounds to believe that the**  
28 **person ~~to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways**  
29 **of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration**  
30 **or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be**

administered and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) ~~If a commercial motor vehicle operator who is a resident of Montana~~ person refuses ~~upon the request of a peace officer~~ to submit to a test designated by the officer ~~as provided in subsection (1), the test may not be given. On behalf of the department, but~~ the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a ~~sworn~~ report certified under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having ~~any a~~ measurable or detectable alcohol concentration or detected presence of alcohol and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit is valid for 72 hours after issuance, effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808.~~

(5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3), the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's certified report, the department shall suspend the person's commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:

(a) ~~upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement upon a first refusal~~, except that if the ~~offense~~ violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

(b) life, upon a second or subsequent refusal at any time as determined from the records of the department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

~~(6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be~~

1 given a temporary driving permit as provided in subsection (4)."

2  
3 **Section 8.** Section 61-8-808, MCA, is amended to read:

4 **"61-8-808. Right of appeal to court.** (1) The department shall immediately notify in writing any  
5 person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the  
6 person may, within Within 30 days after receipt of notification notice of the suspension and the right to  
7 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition  
8 for a hearing on the matter in the district court in the county where the person resides or to challenge the  
9 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or  
10 refusal was made.

11 (2) The court has jurisdiction and shall set the matter for hearing upon. The court shall give at least  
12 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney  
13 shall represent the state.

14 (3) The court shall take testimony and examine the facts of the case, except that:

15 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was  
16 driving or had actual physical control of a commercial motor vehicle while the person's alcohol  
17 concentration was 0.04 or more; and

18 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer  
19 had reasonable grounds to believe that the person had been driving or was in actual physical control of a  
20 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable  
21 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the  
22 person refused to submit to the test.

23 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or  
24 is subject to suspension as provided in this part."

25  
26 **Section 9.** Section 61-8-812, MCA, is amended to read:

27 **"61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle. (1)**  
28 Upon receipt of information that a commercial motor vehicle operator notice from a court of competent  
29 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been  
30 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out-of

1 ~~service out-of-service order~~, the department shall suspend the ~~operator's~~ person's commercial driver's  
2 license for;

3 (a) 6 months for a first conviction and for;

4 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the  
5 time of the violation was not transporting placardable hazardous materials or was not designed or being  
6 used to transport more than 15 passengers, inclusive of the driver; and

7 (c) 3 years:

8 (i) for a second conviction if the vehicle:

9 (A) being operated at the time of the violation was transporting placardable hazardous materials;

10 or

11 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

12 (ii) for a third or subsequent conviction.

13 (2) For purposes of this section, an offender is considered to have been previously convicted if less  
14 than 10 years have elapsed between the commission of the present offense and a previous conviction.

15 (3) A temporary or probationary commercial driver's license may not be issued while a commercial  
16 driver's license is suspended under subsection (1)."

17 -END-